

Andaian yang munasabah ialah tidak ada perintah dibuat di bawah perwakilan kuasa ini.

Kedua, terdapat juga Perwakilan Kuasa-Kuasa Menteri Kepada Penguasa Pusat Pemulihan Akhlak, Pulau Jerejak dan Penguasa Pusat Pemulihan Akhlak, Muar (PU(B) 195/79). Perwakilan kuasa ini mewakilkan kuasa menteri untuk memerintahkan seseorang yang ditahan di pusat-pusat itu dibawa ke mana-mana hospital atau klinik untuk mendapat rawatan doktor kepada penguasa-penguasa pusat-pusat tersebut. Adalah nyata perwakilan kuasa ini tidak berkenaan dalam kes ini.

Tetapi, kedua-dua perwakilan kuasa itu jelas menunjukkan bahawa ia dibuat untuk mengelakkan sebarang kelambatan atau kerumitan untuk mendapat perintah menteri atau timbalan menteri. Ia juga mematahkan hujah bahawa orang tahanan boleh dipindah atau dibawa dan ditahan di tempat lain tidak kira perintah di bawah ss 12 atau 13 dibuat atau tidak. Kerana, jika itu boleh dilakukan tanpa perintah di bawah seksyen-seksyen itu, apakah perlu membuat perwakilan kuasa itu?

Saya mengambil perhatian terhadap keputusan YA Ahmad Fairus PK dalam kes *Lim Yack Boon lwn Timbalan Menteri Dalam Negeri Malaysia dan Satu Yang Lain*<sup>1</sup> dan, dengan penuh hormat, saya bersetuju dengan pendapatnya dalam persoalan yang serupa.

Kesimpulannya, dalam penghakiman saya, dengan membawa keluar dan menahan pemohon di tempat lain selain daripada yang tersebut dalam perintah tahanan tanpa perintah menteri di bawah ss 12 atau 13 Ordinan 1969 itu, pihak responden telah tidak mematuhi perintah tahanan itu dan peruntukan ss 4(2), 12 dan 13 Ordinan 1969 itu. Akibatnya penahanan pemohon di tempat-tempat lain itu dan bagi tempoh-tempoh berkenaan itu adalah tidak mengikuti undang-undang dan tidak sah.

Atas alasan ini saya meluluskan permohonan ini dan memerintahkan supaya writ habeas corpus dikeluarkan dan pemohon dibebaskan.

*Permohonan dibenarkan.*

Peguamcara: *Shanmugam & Co.*

Dilapurkan oleh *Neoh Lay Choo*

## A Wan Ismail & Seng Liang Sdn Bhd v Musa bin Mat Jani & Anor

HIGH COURT (TEMERLUH) — CIVIL SUIT NO 22-8 OF 1988  
LAMIN J  
10 JUNE 1989

B *Civil Procedure — Injunction — Application to set aside — Whether agreement relied on illegal — Malay Reservations Enactment (Cap 142), ss 2, 7 & 19 — Land Code (Cap 138), s 2*

This is an application by the defendants to set aside the injunction obtained against them on 20 July 1988. On 13 March 1985, the first defendant and the plaintiff entered into an agreement whereby the plaintiff undertook to mine for gold ore in the area known as SG1/37 lot No LO1013 mukim Telang, Lipis ('the mining land'). By cl 1 of the said agreement, the first defendant was to grant an option to the plaintiff to take a sub-lease over the said mining land. The first defendant subsequently gave notice to terminate, with immediate effect, the said agreement. On 20 July 1988, the plaintiff obtained an injunction to restrain the defendants from interfering with the plaintiff in exercising its rights under the said agreement. The first defendant applied to set aside the injunction on the grounds, inter alia, that the said agreement was illegal and therefore void ab initio in the face of the Malay Reservations Enactment (Cap 142). The application was allowed in the terms as prayed and the plaintiff appealed.

Held, dismissing the plaintiff's appeal:

E (1) The purport of the said agreement was to sub-lease to the plaintiff the mining lease granted to the first defendant. The plaintiff not being a 'Malay', is legally prohibited to 'deal' or even 'attempt to deal' with a Malay holding and any such deal or attempt to deal would be null and void under s 19(i) of the Malay Reservations Enactment (Cap 142).

F (2) As the plaintiff is not a body gazetted under the Third Schedule as required by s 7 of the Enactment, the transaction as undertaken with the terms of the said agreement cannot be legally recognized.

G [Editorial Note: The plaintiff's appeal to the Supreme Court vide Civil Suit No 02-17-89 was heard on 21 May 1990 and the Supreme Court (comprising Lee Hun Hoe CJ (Borneo), Harun Hashim and Ajaib Singh SCJJ) dismissed the appeal with costs.]

Legislation referred to

Land Code (Cap 138) s 2

Malay Reservations Enactment (Cap 142) ss 2, 7, 19

BE Teh for the plaintiff.

H Raja Azhar bin Raja Nahar (Manjit Singh with him) for the defendants.

*Cur Adv Vult*

I Lamin J: This is an application (encl 13) by the defendants/applicants to set aside the injunction obtained against them on 20 July 1988. On 28 February 1985, the first defendant's application for a mining land was approved for an area of 35 acres 2 roods 22 poles (not 48 acres as indicated by the first letter of approval earlier in the day: see the two letters from the Pejabat Tanah Daerah Lipis both dated 28 February 1985). On 13 March 1985, the first defendant and the plaintiff entered into an agreement

whereby the plaintiff undertook to mine for gold ore in the said area as approved and identified as SG1/37 lot No LO1013 mukim Telang, Lipis (hereafter referred to as 'the mining land'). The plaintiff was to mine/work for the gold ore either as agent or as contractor for the defendant. By cl 1 of the said agreement, the first defendant was to grant an option to the plaintiff to take a sub-lease over the said mining land. Following the granting of the mining lease, on 3 February 1986, the first defendant was given a mining certificate thereby permitting the commencement of mining operation in the said area. However, due to problems between themselves, the first defendant by a letter dated 10 December 1987 (see exh LS-4 to encl 5) gave notice to terminate, with immediate effect, the agreement of 13 March 1985. Accordingly, on 20 July 1988, the plaintiff applied for and obtained an injunction (application as per encl 5) to restrain the defendants from interfering with the plaintiff company in exercising its rights under the said agreement. By encl 13, the first defendant applied to set aside the injunction on the grounds, inter alia, that the agreement of 13 March 1985 was illegal and therefore void ab initio in the face of the Malay Reservations Enactment (Cap 142) ('the Enactment'). On 15 December 1988, I allowed the application in the terms as prayed and the plaintiff now appeals.

I was satisfied that from the evidence adduced before me that the defendants had conclusively proved that the said mining area was part of a Malay reserved land vide Pahang Gazette Notification No 171 dated 26 February 1987. As my decision to allow the application to set aside the injunction against the defendants was solely persuaded by the provisions of the Enactment, I did not find it necessary to dwell further on the merits of this case on other grounds.

Section 2 of the Enactment makes provision for the definition of 'Malay' with regard to both an individual and a corporate body. For a corporate body to be treated as a 'Malay' for the purposes of the Enactment, the definition reads:

For the purposes of the Enactment a company registered under the Companies Enactment shall if and so long as every member thereof is a Malay and the transfer of shares therein is restricted by the Articles of Association thereof to Malays be deemed to be a Malay ...

Reading the above definitions I find that the plaintiff company cannot therefore be accepted as a 'Malay'. For ease of reference, I shall also reproduce the other relevant provisions of the said Enactment and any other law relevant to this case. Section 2 of the Enactment also imports the definition of words and expressions as contained in the Land Code and the provision reads:

All words and expressions used in this Enactment which are defined in section 2 of the Land Code shall bear the meaning assigned to them by the said section.

A (The Land Code referred to must mean the Land Code (Cap 138) being one of the FMS revised laws and so is the Malay Reservations Enactment (Cap 142).) Section 7 of the Enactment reads:

No State land included within a Malay Reservation shall be sold, leased or otherwise disposed of to any person not being a Malay:

B Provided that the Ruler in Council may alienate State Land within a Malay Reservation to any body corporate or company specified in the Third Schedule, which the Ruler in Council may, by order published in the Gazette, add to, delete from or amend, from time to time:

C and provided further that any State land thus alienated shall be deemed to be a Malay holding.

Section 19 of the Enactment reads:

(i) All dealings or disposals whatsoever and all attempts to deal in or dispose of any Malay holding contrary to the provisions of this Enactment shall be null and void and no rent paid in pursuance of any such dealing disposal or attempt shall be recoverable in any Court.

D (ii) No action for breach of contract shall lie in respect of any dealing in or disposal of or any attempt to deal in or dispose of any Malay holding contrary to the provisions of this Enactment.

E The definition of the word 'dealing' as found in s 2 of the Land Code (Cap 138) reads:

'Dealing' with its grammatical variations and cognate expressions means any transaction of whatever nature by which land is affected under this or any previous Land Enactment or Registration of Titles Enactment, and includes a caveat.

F This definition must therefore be given effect to to the word 'dealing' in the Enactment.

G I find that the purport of the agreement of 13 March 1985 was to sub-lease to the plaintiff company the mining lease granted to the first defendant. The plaintiff company not being a 'Malay', is legally prohibited to 'deal' or even 'attempt to deal' with a Malay holding and any such deal or attempt to deal would be null and void (s 19(i) of the Enactment). Also, as the plaintiff company is not a body gazetted under the Third Schedule as required by s 7 of the Enactment, I am also of the view that the transaction as undertaken within the terms of the agreement of 13 March 1985 cannot be legally recognized. Similarly the power of attorney dated 27 November 1986 granted by the first defendant in favour of one Lim Seng alias Lam Kam Sang, the managing director, of the plaintiff company, cannot also be recognized in law.

H *Appeal dismissed.*

Solicitors: *Teh & Associates; Raja Azhar & Husain Safri.*

Reported by *Kevin Mathews*